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January 21, 2022

***VIA ELECTRONIC MAIL***

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Re: Rosenfeld v. AC2T, Inc.; 1:20cv4662 (E.D.N.Y.)  
Written Objections and Responses of Dr. Donald Yee

Dear Edward and Anna:

As you know, this law firm represents Dr. Donald Yee ("Dr. Yee") regarding the subpoena issued to and served upon him by Defendant AC2T, Inc., as part of the above-referenced litigation. The subpoena (the "Subpoena") was issued on or about December 17, 2021, and I appreciate your courtesies in extending Dr. Yee's deadline to respond or make objections to the Subpoena through today's date.

On behalf of Dr. Yee, I provide these written objections and responses to the Subpoena, pursuant to Federal Rule of Civil Procedure 45. Subject to the responses and objections below, Dr. Yee will produce to you any documents identified for production contemporaneous with delivery of this letter.

**GENERAL OBJECTIONS TO DEFENDANT'S SUBPOENA**

1. Dr. Yee objects to the date and time for compliance with the Subpoena as unreasonable and insufficient. Subject to and without waiver of any of his objections, Dr. Yee will produce any documents identified for production contemporaneous with delivery of this letter.

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2. Dr. Yee objects to the Subpoena as violating Federal Rule of Civil Procedure 45(d)(1) by failing to take reasonable steps to avoid imposing undue burden or expense on him. Dr. Yee further objects to the Subpoena under Rule 45 for imposing undue burden on him, as a non-party to the litigation. Dr. Yee reserves his right under Rule 45(d) and under any other applicable rule or statute to seek cost-shifting from Defendant for the significant expense that compliance with this Subpoena imposes, particularly as served by Defendant.

3. Dr. Yee objects to the Requests to the extent they seek documents outside his possession, custody, or control or require him to create documents not in existence.

4. Dr. Yee objects to the Requests to the extent they seek documents available to Defendant through sources other than Dr. Yee and through less burdensome means, including, *inter alia*, parties to the litigation, public sources, or records, and/or other sources otherwise equally available to Defendant.

5. Dr. Yee objects to the Requests to the extent they seek documents protected from disclosure by the attorney-client privilege, the work product doctrine, or similar privileges, immunities, or laws. Any inadvertent disclosure of any documents privileged or otherwise protected from discovery shall not constitute a waiver of any privilege with respect to such documents or the subject matter.

6. Dr. Yee objects to the Requests to the extent they seek documents concerning claims, issues, matters, and/or non-parties not at issue or involved in the litigation or documents not relevant to any party's claim or defense or proportional to the needs of the case as overly broad and unduly burdensome.

7. Dr. Yee objects to the Requests, including the Definitions and Instructions, to the extent they create an undue burden for Dr. Yee in responding and objecting to the Requests or purport to impose obligations on Dr. Yee beyond or inconsistent with those imposed by the Federal Rules of Civil Procedure or other applicable rules or orders.

8. Dr. Yee objects to the Requests to the extent they seek documents containing confidential business or other proprietary information, confidential information obtained by Dr. Yee under contractual promise of non-disclosure, or nonpublic personal information. Relevant documents containing nonpublic personal information may be produced with appropriate redactions designed to minimize the

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risk of public disclosure of identifiable nonpublic personal information. As set forth below, Dr. Yee will provide documents, if any, pursuant to an appropriate protective order regarding confidentiality of documents and information. Dr. Yee will not produce documents requested by Defendant containing confidential information neither relevant nor reasonably likely to lead to the discovery of relevant evidence, as such production is unduly burdensome relative to the value of such documents to determination of the facts and legal questions at issue in this litigation.

9. Dr. Yee objects to the Requests to the extent they seek “all” documents “relating to” a particular topic over multiple years as requiring unreasonable, overly broad searches, collections, and productions of duplicative and irrelevant documents. Such Requests are thus unduly burdensome relative to the value of such documents to determination of the facts and legal questions at issue in this litigation and not proportional to the needs of the case.

10. Dr. Yee objects to the Requests to the extent they require him to provide information about documents destroyed, misplaced, or otherwise disposed of or unavailable. Dr. Yee will produce responsive documents currently in his custody, possession, or control.

11. As provided by Fed. R. Civ. Pr. 45(d)(3)(B)(ii), Dr. Yee objects to the Requests to the extent they require him to produce documents which disclose his expert opinion or information that does not describe specific occurrences in dispute in the litigation and results from his study that was not requested by a party to the litigation. Dr. Yee reserves the right to seek a protective order, if necessary, to protect his opinions and information not relevant to facts at issue in this litigation.

12. Any statement that Dr. Yee will produce documents in response to any request should not be taken as an indication that such documents exist but only that Dr. Yee will produce such documents if the documents exist in his possession, custody, or control and are not privileged or otherwise exempt from production under applicable law.

13. Dr. Yee objects to Instruction H to the extent it purports to impose an ongoing obligation to produce documents that he obtains in the future. Dr. Yee’s agreement to produce documents in response to any of the Requests is an agreement to produce documents in his custody, possession, or control at the time of responding to the Subpoena.

14. Dr. Yee objects to the Subpoena to the extent requiring his appearance at a deposition on January 17, 2022. Without waiving any objection, including, but

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not limited to, any objection under Fed. R. Civ. Pr. 45(d)(3)(B)(ii), Dr. Yee will appear for his deposition at an agreed time and location, as consented by Defendant.

Subject to and without waiving any General Objection, Dr. Yee responds to the specific Requests:

**RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS**

**Request No. 1:** All drafts of the Paper, including manuscript revisions.

**Response:** Under Fed. R. Civ. Pr. 45(d)(3)(B)(ii), Dr. Yee objects and will not produce any responsive documents.

**Request No. 2:** All Documents You relied on in authoring or publishing the Paper.

**Response:** Under Fed. R. Civ. Pr. 45(d)(3)(B)(ii), Dr. Yee objects and will not produce any responsive documents.

**Request No. 3:** All Documents relating to the testing described in the Paper, including but not limited to lab books, research notes, Documents relating to test methodology, Documents describing the sourcing and chain of custody for the materials tested, and test results.

**Response:** Under Fed. R. Civ. Pr. 45(d)(3)(B)(ii), Dr. Yee objects and will not produce any responsive documents.

**Request No. 4:** All Documents relating to communications with the Paper's other authors or contributors concerning the Paper or its subject matter, including but not limited to Catherine Dean, Cameron Webb, Jennifer A. Henke, Gabriela Perezchica-Harvey, Gregory S. White, Ary Faraji, Joshua D. Macaluso, Rebecca Christofferson, the National Institute of Health, and the two anonymous reviewers or any persons acting on their behalf.

**Response:** Under Fed. R. Civ. Pr. 45(d)(3)(B)(ii), Dr. Yee objects and will not produce any responsive documents.

**Request No. 5:** All Documents relating to the payment, commissioning, sponsorship, or any other financial contribution or assistance provided by any person in connection with the testing, editing, or authorship of the Paper.

**Response:** Under Fed. R. Civ. Pr. 45(d)(3)(B)(ii), Dr. Yee objects and will not produce any responsive documents.

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**Request No. 6:** All documents relating to the selection of the nine mosquito species to be used in the test described in the Paper.

**Response:** Under Fed. R. Civ. Pr. 45(d)(3)(B)(ii), Dr. Yee objects and will not produce any responsive documents.

**Request No. 7:** All Documents relating to communications with AC2T or any person acting on its behalf concerning the Paper, Hirsch, Bonner, this Action, or any other action challenging the efficacy of the Product.

**Response:** Dr. Yee will produce any responsive documents.

**Request No. 8:** All Documents relating to communications with Bonner or any person acting on its behalf concerning the Paper, the Product, AC2T, Hirsch, this Action, or any other action challenging the efficacy of the Product.

**Response:** Dr. Yee will produce any responsive documents.

**Request No. 9:** All Documents relating to communications with Vindhya Aryaprema, or persons acting on her behalf concerning the Product, AC2T, Hirsch, Bonner, this Action, or any other action challenging the efficacy of the Product.

**Response:** Under Fed. R. Civ. Pr. 45(d)(3)(B)(ii), Dr. Yee objects and will not produce any responsive documents.

**Request No. 10:** All Documents relating to communications with Dr. Rui-De Xue or persons acting on his behalf concerning the Product, AC2T, Hirsch, Bonner, this Action, or any other action challenging the efficacy of the Product.

**Response:** Under Fed. R. Civ. Pr. 45(d)(3)(B)(ii), Dr. Yee objects and will not produce any responsive documents.

**Request No. 11:** All Documents relating to communications with Gordon Cannon or persons acting on his behalf concerning the Product, AC2T, Hirsch, Bonner, this Action, or any other action challenging the efficacy of the Product.

**Response:** Dr. Yee objects to this request as seeking documents not reasonably related to claims or defenses in the litigation and as placing an undue burden on him. Dr. Yee will not produce any responsive documents.

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**Request No. 12:** All Documents relating to communications with Janet Donaldson or persons acting on her behalf concerning the Product, AC2T, Hirsch, Bonner, this Action, or any other action challenging the efficacy of the Product.

**Response:** Dr. Yee objects to this request as seeking documents not reasonably related to claims or defenses in the litigation and as placing an undue burden on him. Dr. Yee will not produce any responsive documents.

**Request No. 13:** All Documents relating to communications with Wendy Varnado or persons acting on her behalf concerning the Product, AC2T, Hirsch, Bonner, this Action, or any other action challenging the efficacy of the Product.

**Response:** Dr. Yee objects to this request as seeking documents not reasonably related to claims or defenses in the litigation and as placing an undue burden on him. Dr. Yee will not produce any responsive documents.

**Request No. 14:** All Documents relating to communications with Plaintiff or Plaintiff's Counsel or persons acting on behalf of either concerning the Paper, the Product, AC2T, Hirsch, Bonner, this Action, or any other action challenging the efficacy of the Product.

**Response:** Dr. Yee will produce any responsive documents following the resolution of any assertions of privilege or immunity by Plaintiff's counsel.

**Request No. 15:** All Documents relating to communications with Plaintiff's Counsel regarding any other lawsuits concerning pesticides or similar products in the last ten (10) years.

**Response:** Dr. Yee will produce any responsive documents following the resolution of any assertions of privilege or immunity by Plaintiff's counsel.

**Request No. 16:** All Documents relating to communications with Colin Purrington, or persons acting on his behalf concerning the Paper, the Product, ACT2, Hirsch, Bonner, this Action, or any other action challenging the efficacy of the Product.

**Response:** Dr. Yee objects to this request as seeking documents not reasonably related to claims or defenses in the litigation and as placing an undue burden on him. Dr. Yee will not produce any responsive documents.

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**Request No. 17:** All Documents relating to Your decision to not test the Product for the Paper.

**Response:** Under Fed. R. Civ. Pr. 45(d)(3)(B)(ii), Dr. Yee objects and will not produce any responsive documents.

**Request No. 18:** All Documents relating to Your decision to not test the range of sodium chloride that the Product uses during its lifecycle (1%-1.5%).

**Response:** Under Fed. R. Civ. Pr. 45(d)(3)(B)(ii), Dr. Yee objects and will not produce any responsive documents.

**Request No. 19:** All Documents relating to your communications with the University of Southern Mississippi Office of Research Administration over the last five (5) years.

**Response:** Dr. Yee objects to this request as seeking documents not reasonably related to claims or defenses in the litigation and as placing an undue burden on him. Dr. Yee will not produce any responsive documents.

Very truly yours,

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J. Cal Mayo, Jr.  
JCM,Jr./kw

cc: Yitz Kopel, Esq. (via email: [ykopel@bursor.com](mailto:ykopel@bursor.com))  
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